

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

| | | |
|-----------------------------|---|-----------------------|
| Gerald & Shirley Simonds, | : | |
| | : | C.A. No. 05-06-0131AP |
| Defendants below/ | : | |
| Appellants, | : | |
| | : | |
| v. | : | |
| | : | |
| Edward J. and Eunice Bauer, | : | |
| | : | |
| Plaintiffs below/ | : | |
| Appellees. | : | |

Submitted: April 28, 2006

Decided: April 28, 2006

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of jurisdiction.

**Gerald and Shirley Simonds, 830 Peasant Pine Circle, Harrington, Delaware 19952,
Pro Se Appellants.**

**Edwin J. and Eunice M. Bauer, 1632 Woodyard Road, Harrington, Delaware 19952,
Pro Se Appellees.**

Trader, J.

In this civil appeal, I hold that this Court lacks jurisdiction to consider this appeal from the Justice of the Peace Court because of the absence of parties essential to the determination of the entire action.

The relevant facts are as follows: On April 19, 2005, the appellees, plaintiffs below, filed a civil action against the appellants, defendants below, Gerald A. Simonds, Shirley E. Simonds, Cynthia Walsh, and Tom Vanvliet. After a trial on June 13, 2005, judgment was entered against all four defendants. On June 21, 2005, the appellants, Gerald E. Simonds and Shirley Simonds, took an appeal to this Court, but Cynthia Walsh and Tom Vanvliet did not join in that appeal.

The jurisdiction of this Court is limited to try the same action as instituted in the Justice of the Peace Court. *Cooper's Home Furnishings v. Smith*, 250 A.2d 507, 508 (Del. Super.1969). Our courts have held that “in order for the [Court of Common Pleas] to have jurisdiction of an appeal *de novo* from the Justice of the Peace Court, the parties below and on appeal must be identical in name, number, and character, or right, in which they sue or are sued.” *Hicks v. Taggart*, 1999 WL 462375 at *3(Del. Super. Apr. 12, 1999)(quoting *Vailati v. Berman*, 1991 WL 138367 at *1 (Del. Super. May 28, 1991)). This rule has been described by Judge Ridgely, now Justice Ridgely as the mirror image rule because it provides a mirror image of the parties and issues tried below and assures retrial of the same cause of action as occurred in the Justice of Peace Court. *Sulla v. Quillen*, 1987 WL 18425 at *1 (Del. Super. Sept. 24, 1987) “Any variance from the lower court proceeding strips the Court of jurisdiction [to hear the appeal].” *Hicks v. Taggart, supra*. (quoting *McIlvaine v. Townsend*, 1997 WL 364036 at *2 (Del. Super. June 12, 1997)).

In the case at bar, the appellants failed to join in this appeal two co-defendants against whom judgment was entered in the court below. Since two of the four defendants did not take an appeal and have not been joined in this appeal, this Court does not have jurisdiction to hear this appeal.

Accordingly, the appeal is dismissed for lack of subject matter jurisdiction.

IT IS ORDERED.

Merrill C. Trader
Judge